

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF EVIDENCE
SEPTEMBER 15, 2023 MINUTES**

The Evidence Rules Committee held a virtual meeting on September 15, 2023, at 2:00 PM via Microsoft Teams.

Present: Hon. Dickson Corbett, Hon. Harold Eaton, Hon. John Pacht, Mimi Brill, Ben Chater, Michelle Donnelly, Cristina Mansfield, Karen McAndrew, Liz Miller, Marshall Pahl

Reporter: Jennifer Rushlow

Minutes from the last committee meeting were approved.

COMMITTEE MEMBERSHIP

The committee discussed candidates for two open seats and voted on a recommendation to the Vermont Supreme Court for new members.

OLD BUSINESS

Restyling

The committee's proposed changes to remove gendered pronouns from the rules will be submitted to the Vermont Supreme Court shortly.

Lawyer Referral Privilege

A subcommittee convened to develop proposed draft language. The subcommittee reviewed model language from other states and recommended language from the American Bar Association. The subcommittee's goal for the new language is to protect the reasonable expectation of privacy that people calling a lawyer referral service might have when seeking help for a potential legal issue. The committee discussed the subcommittee's proposed rule language and debated where in the Vermont Rules of Evidence the new privilege should appear. Suggestions for placement included integrating into Rule 502 as part of existing section (b), or as a new section (e). The committee also discussed whether a definition for "lawyer referral service" should be added to part (a) of Rule 502, or integrated into the existing definition of "client" in 502(a)(1).

Judge Corbett will circulate draft language before the Committee's next meeting for continued discussion and potentially a committee vote.

Rule 615.

A subcommittee assigned to this potential rule revision has not met yet. Judge Corbett updated the committee on the issue. On December 1, 2023, amendments to Rule 615 of the Federal Rules

of Evidence take effect, namely a new subsection (b). The rule was revised in response to controversy in federal cases about whether Rule 615 was limited to physical presence in the courtroom or whether it also authorizes judges to regulate access to trial testimony by witnesses who are excluded from the courtroom. This committee previously discussed the ways that these issues are implicated by remote proceedings and agreed that it is an issue that should be addressed in rule revisions.

The committee discussed the new federal language, particularly whether the word “trial” in “trial testimony” is too limiting, noting the federal Committee Notes state that the rule applies to virtual trials or remote trials as well as in-person trials. The committee discussed substituting a broader term, such as “courtroom” or “proceeding.” The committee discussed the need to avoid prohibitions on disclosure of documentary evidence.

Judge Corbett will circulate draft language before the Committee’s next meeting.

The next meeting of the committee will take place on January 19, at 2:00 PM via Microsoft Teams.